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Civil Procedure Act 2010 (Vic): Some Reflections on Civil Justice and the Need for Further Reform – *Peter Cashman*

The Civil Procedure Act 2010 (Vic) introduced a number of reforms in Victoria designed to not only improve civil procedural rules but to change litigation culture. Of particular significance are the innovative and wide-ranging statutory obligations imposed on parties, practitioners, law practices, expert witnesses and those exercising influence over the conduct of litigation, including insurers and litigation funders. These and other reforms are reviewed, along with other reforms recommended by the Victorian Law Reform Commission that were not implemented as proposed, not implemented at all or were implemented and then repealed following a change of government in Victoria. These include provisions designed to resolve disputes without the necessity of litigation, a new funding mechanism, procedures for getting to the truth earlier and easier, cy près remedies in class actions and a new body with ongoing statutory responsibility for review and reform of the civil justice system. 5

Changing the Culture of Litigation in Victoria: Ten Years of the Civil Procedure Act 2010 (Vic) – *Corey Byrne*

Ten years ago, the *Civil Procedure Act 2010* (Vic) was enacted with a stated aim of changing the culture of litigation in Victoria by providing the courts with case management powers that are broader than in any other Australian jurisdiction. The legislation applies "overarching obligations" to participants in civil litigation and provides the courts with the power to sanction those in breach. Since its enactment, despite some initial reticence, the overarching obligations have become a powerful tool by which the courts have held participants to account, in some cases leading to the courts imposing significant sanctions for breach. This article examines the first 10 years of jurisprudence on the *Civil Procedure Act* and considers how the overarching obligations and sanction provisions have been interpreted by the courts. 31

Should Uniform Civil Case Management Principles "Overarch" or "Override"? Comparing Victorian and New South Wales Active Case Management After a Decade of the Civil Procedure Act 2010 (Vic) – *Sonya Willis*

In 2010, Victoria introduced the *Civil Procedure Act 2010* (Vic), five years after New South Wales introduced the *Civil Procedure Act 2005* (NSW). Both Acts have active case management as their centrepiece. However, Victoria carefully drafted its own legislation with "overarching" case management provisions, which markedly differed from the New South Wales "overriding" case management provisions that were designed to improve

efficiency in the courts. This article compares the Victorian and New South Wales provisions and their implementation by superior courts with a view to considering which version, if either, should be adopted in a future potential unified Australian civil procedure law. 55

Evaluating the Impacts of the Civil Procedure Act 2010 (Vic): Critical Disclosure and Unanswered Questions – *Genevieve Grant and Esther Lestrell*

Civil justice reform is hard work. If we go to the effort of taking steps to improve a civil justice system, we want those changes to have the desired effects. Despite this, reform efforts in civil justice often cease at the point a legislative change commences – stopping far short of robust evaluation of impacts and effectiveness. The 10th birthday of the *Civil Procedure Act 2010* (Vic) (CPA) in 2021 is a fitting time to explore whether this significant intervention in Victoria's litigation landscape has generated the intended results. This article focuses on the operation and evaluation of the overarching obligation in s 26 to disclose the existence of documents critical to the resolution of a dispute. It examines the objectives of the obligation and, using traditional legal analysis, reviews the deployment of s 26 in case law in the CPA's first decade. The article then turns to alternative ways the operation of the provision might be evaluated. This discussion demonstrates the need for better data and evaluation practice in the assessment of procedural innovations in civil justice systems, a requirement only increased by the urgent and profound changes effected in response to the COVID-19 pandemic. 75